

No. 17004

United States
Court of Appeals
For the Ninth Circuit

ALFONS SIMON KEIL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

NOV 4 1960

FRANK H. SCHMID, CLERK

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Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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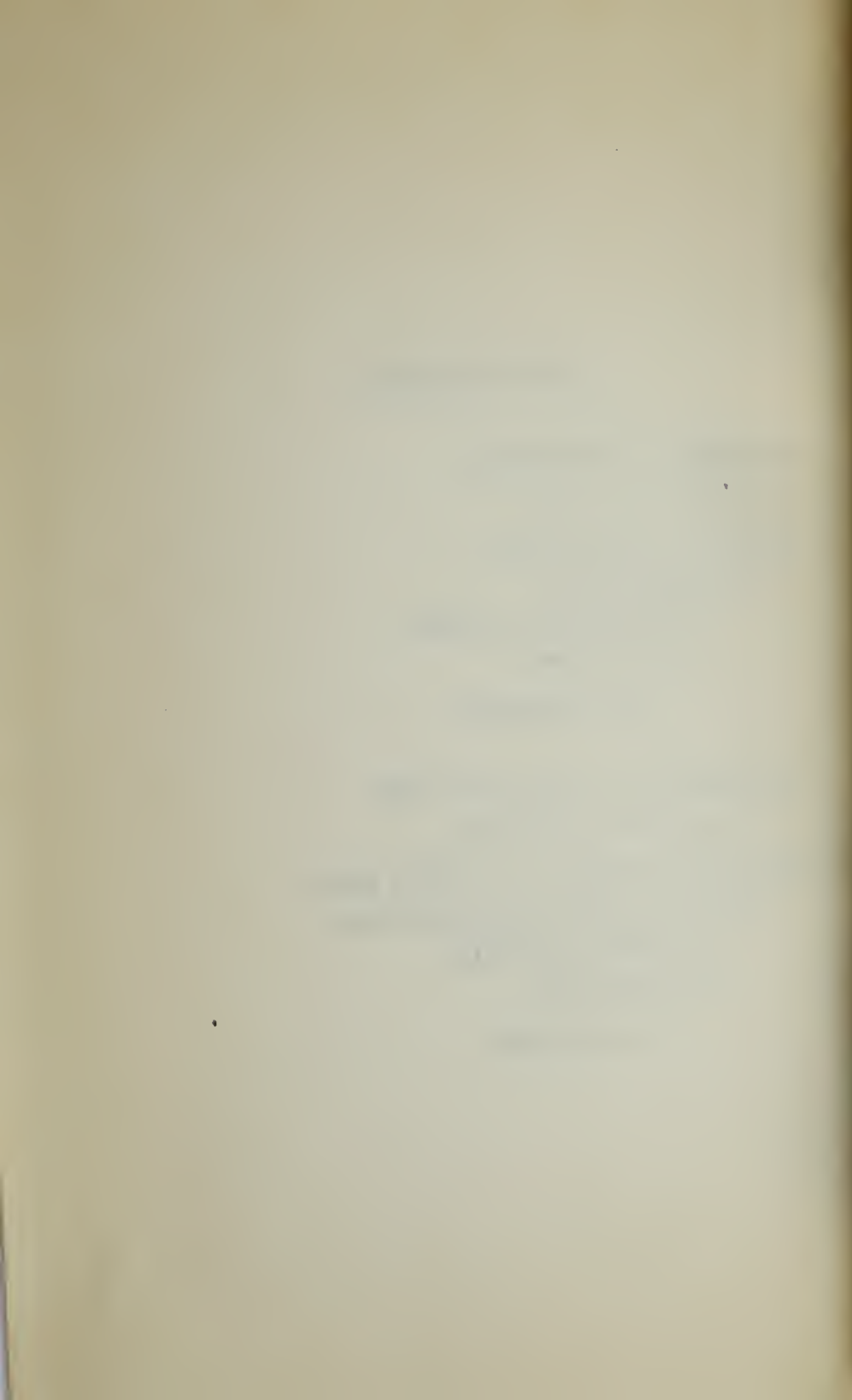
APPEARANCES

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For Appellant.

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United States Attorney;

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Assistant United States Attorney,
Post Office Building,
San Francisco,
For Appellee.



137140

ORIGINAL
(To be retained
by Clerk of Court)

UNITED STATES OF AMERICA

PETITION FOR NATURALIZATION

Filed under SECTION 316 (a)

To the Honorable the DISTRICT Court of THE UNITED STATES of SAN FRANCISCO, CAL.

This petition for naturalization, hereby made and filed, respectfully shows:

(1) My full, true, and correct name is ALFONS SIMON KEIL.
(2) My present place of residence is 6537 Knott Blvd., El Cerrito, Calif. My occupation is Journeyman Machinist; I was born on July 9, 1928 in Saal Donau, Germany.
(3) My personal description is as follows: Sex: Male, complexion: Fair, color of eyes: Blue, hair: Brown, height: 5 feet 9 inches, weight: 165 pounds, visible distinctive marks: None, country of which I am a citizen, subject, or national: Germany.
(4) I am married; the name of my wife or husband is Katharina (nee Schuetz), we were married on Nov. 5, 1951 at Saal Donau. He or she was born at Staffelstein, Germany and entered the United States of New York, N. Y. on Feb. 17, 1932. I am now residing at New York, N. Y. on Aug. 4, 1953 for permanent residence in the United States and now reside at With me and was naturalized on [blank] (Month) (Day) (Year) at [blank] (City or town) (State) certificate No. [blank]; or became a citizen by [blank] (State).

(7a) If petition is filed under section 319 (a), Immigration and Nationality Act. I have resided in the United States in marital union with my United States citizen spouse for at least 3 years immediately preceding the date of filing this petition for naturalization, and have been physically present in the United States at least half of that time.
(7b) If petition is filed under section 319 (b), Immigration and Nationality Act. My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or purely technical functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States, and such husband or wife is regularly stationed abroad in such employment. I intend in good faith upon naturalization to live abroad with my spouse and to resume my residence within the United States immediately upon termination of such employment abroad.
(8) I have No children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows:

(9) My lawful admission for permanent residence in the United States was at New York, N. Y. under the name of Alfons S. Keil on August 5, 1953 as the SS Illeg de France.

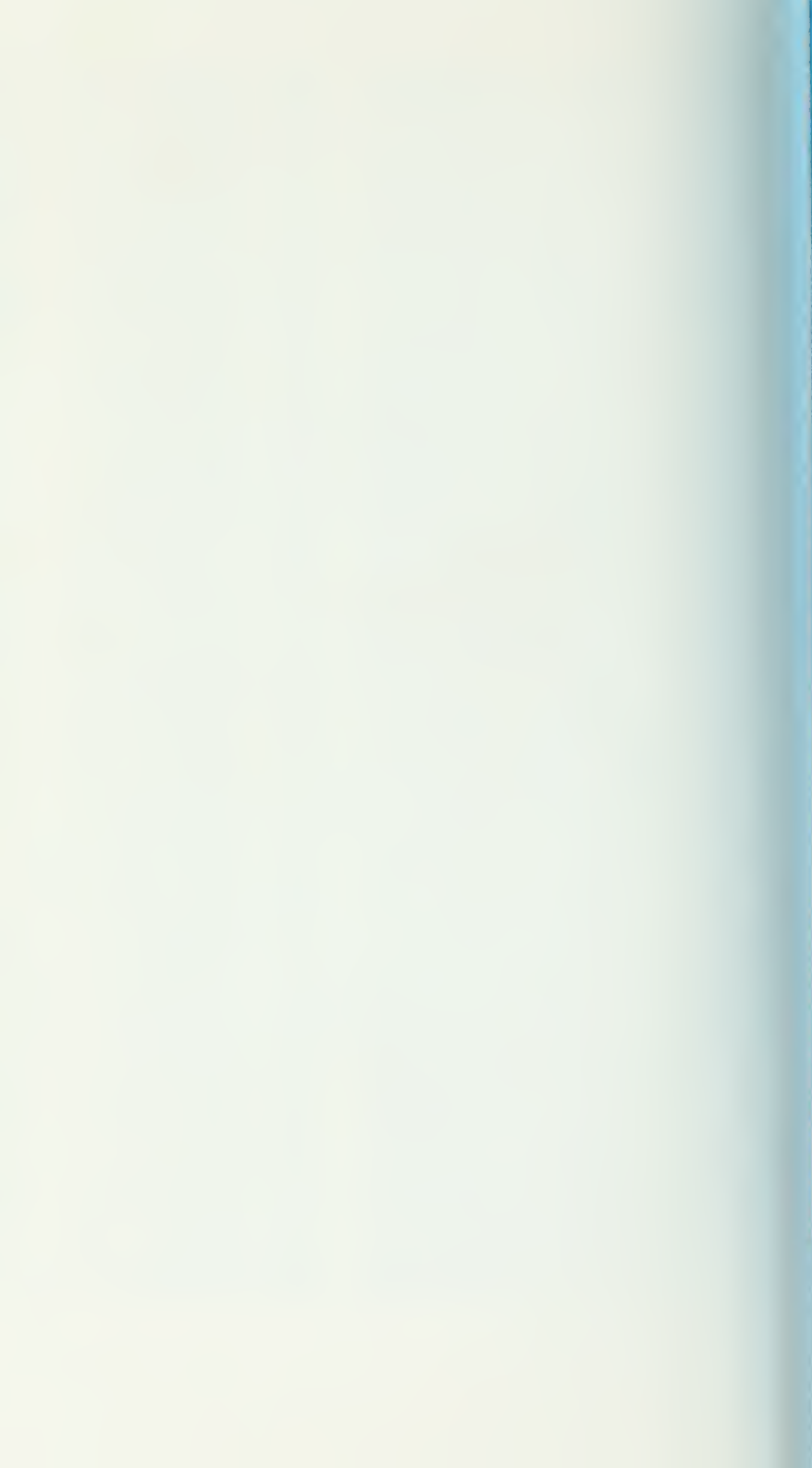
(10) Since my lawful admission for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, except as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	PORT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen. (12) It is my intention to reside permanently in the United States. (13) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization prohibited by the Immigration and Nationality Act or any section, subsidiary branch, affiliate or subdivision thereof nor have I during such period believed in, advocated, conspired in or performed any of the acts or activities prohibited by that Act. (14) I am able to read, write and speak the English language (unless exempted therefrom). (15) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, to perform noncombatant service in the Armed Forces of the United States, and to perform work of national importance under civilian direction (unless exempted therefrom). (16) I have resided continuously in the United States since Aug. 4, 1953 and continuously in the State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition and I have been physically present in the United States for at least one-half of the 5 year period immediately preceding the date of this petition. (17) I have Nov. heretofore made petition for naturalization No. [blank] at [blank] (City or town) (State) Court, and such petition was denied by that Court for the following reasons and appears, to wit:

(18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses subscribed by me. (19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that this petition is signed by me with my full, true name: DO HELP ME GOD.

Alfons Simon Keil
I, Alfons Simon Keil, do swear (affirm) that I have signed the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: DO HELP ME GOD.



AFFIDAVIT OF WITNESSES

The following witnesses, each being personally duly, and respectively sworn, depose and say:

My name is Alberta J. Drollet, my occupation is Chocolate Dipper
I reside at 5536 Holway St., Oakland, Calif.
My name is Joachim W. Carstens, my occupation is Butcher Shop Owner
I reside at 4403 Oakhill Rd., Oakland, Calif.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least wit (1) 2-25-54 wit (2* 3-2-54) personal knowledge the petitioner has been physically present in the United States for at least 31 months of that period; and that the petitioner has been a resident in the State in which the petition is filed during at least the last 6 months. I have personal knowledge that the petitioner is, and during all such periods has been a person of good moral character, and that the petitioner is, and during all such periods has been a person of good moral character, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

Alberta Jane Drollet (Signature of Witness)

Joachim W. Carsten (Signature of Witness)

WHEN OATH ADMINISTERED BY CLERK OR DEPUTY CLERK OF COURT

WHEN OATH ADMINISTERED BY DESIGNATED EXAMINER

Subscribed and sworn to (affirmed) before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit, in the office of the clerk of said court at San Francisco, Calif. on the 16th day of March, A. D. 1959

Subscribed and sworn to (affirmed) before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit at this day of A. D. 19...

C. W. CALBREATH

For the clerk (Signature)

I HEREBY CERTIFY That the foregoing petition for naturalization was by petitioner named herein duly filed with me in my office of said court on this day of at my office.

ATTEST: C. W. CALBREATH, Clerk of the Superior Court of the District of California. Etta J. Stephenson, Deputy Clerk

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion: SO HELP ME GOD. In acknowledgment whereof I have heretofore affixed my signature.

Alfred Sisson Heid (Signature of Petitioner)

C. W. CALBREATH

FILED IN... (Administrative stamps)

NOTE: In preparation of this or any other affidavit, add the following to the oath of allegiance before it is sworn: "I further renounce the title of 'Citizen' which I have heretofore held, or 'I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged."

Petition granted: Line No. of List No. and Certificate No.
Petition denied: List No. 2377 - Feb. 24, 1960 - submitted for decision
Order confirming findings of fact, conclusions by law & recommended action of eligibility nature, examiner filed herewith - petitioner denied Mar. 30, 1960 Notice of appeal sent to Nat. Atty. District Director of I & N + Heritage, city, May 23, 1960 Bond on appeal filed June 8, 1960

[Title of District Court and Cause.]

FINDINGS OF FACT

I.

That the petitioner was born in Saal Donau, Germany, on July 9, 1928;

II.

That he was lawfully admitted to the United States for permanent residence on August 4, 1953;

III.

That the petitioner became subject to registration for selective service under the provisions of the Universal Military Training and Service Act of 1951;

IV.

That the petitioner registered for selective service at Local Board No. 52, Oakland, California, on February 4, 1954;

V.

That the petitioner submitted an executed Form C-294 (Application by Alien for Exemption from Military Service in the Armed Forces of the United States) to the local board on March 1, 1954;

VI.

That the petitioner was classified IV-C, treaty alien, on March 3, 1954, as a consequence of his request;

VII.

That the petitioner's claim of complete ignorance is without foundation;

VIII.

That the petitioner was classified V-A, over age, on July 21, 1954.

Conclusions of Law

I.

That the Petitioner applied for exemption from military service and was relieved from training and service in the armed forces of the United States on the ground that he was an alien;

II.

That under the provisions of Section 315 of the Immigration and Nationality Act (8 U.S.C.A. 1426) the petitioner is permanently ineligible to become a citizen of the United States.

5. Recommendation

I respectfully recommend that this petition for naturalization be denied on the ground that the petitioner is ineligible for citizenship by virtue of the provisions of Section 315 of the Immigration and Nationality Act, having applied for and been relieved from military service because of alienage.

Respectfully submitted,

/s/ JAMES F. HEWITT,

Designated Naturalization
Examiner.

Date: Feb. 19, 1960.

ORDER OF COURT DENYING PETITIONS
FOR NATURALIZATION

Order No. 3377.

United States of America,
Northern District of Calif.—ss:

Upon consideration of the petitions for naturalization recommended to be denied, listed on List No. 3377, sheet 1, dated February 24, 1960, presented in open Court this 24th day of February, A.D. 1960, It Is Hereby Ordered that each of the said petitions, except those petitions listed below, be, and hereby is, denied.

It Is Further Ordered that the following petitions be denied for the reasons stated:

Petition No. 135723

Name of Petitioner: Sheung Jee Mar.

Reason for Denial: Lack of Prosecution.

Petition No. 139465

Name of Petitioner: Andres Paloma Cainap.

Reason for Denial: Lack of Prosecution.

It Is Further Ordered that petitions listed below be continued for the reasons stated.

Petition No. 140662

Name of Petitioner: Martha June Williams.

Cause of Continuance: Off Calendar.

Ptition No. 136002

Name of Petitioner: Gunter Herbert Mosler.

Cause of Continuance: Submitted for
Decision.

Ptition No. 137140

Name of Petitioner: Alfors Simon Keil.

Cause of Continuance: Submitted for
Decision.

Ptition No. 140430

Name of Petitioner: Bok Soon Carter.

Cause of Continuance: Off Calendar.

By the Court, this 24th day of February, 1960.

/s/ ALBERT C. WOLLENBERG,
Judge.

[Endorsed]: Filed Feb. 24, 1960.

[Title of District Court and Cause.]

ORDER CONFIRMING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOM-
MENDATION OF DESIGNATED NATU-
RALIZATION EXAMINER

The question here presented is whether the peti-
tioner having applied for an exemption from mili-
tary service because of alienage executed the
application for exemption under circumstances
which would make the petitioner ineligible for
United States citizenship under Section 315 of the
Immigration and Nationality Act of 1952.

It is undisputed that the petitioner, an alien, executed an application for exemption from military service in the armed forces of the United States because of alienage and that he was thereby relieved of military service and training. Section 315 of the Immigration and Nationality Act of 1952 provides that such an alien "shall be permanently ineligible to become a citizen of the United States."

However, an alien, considering all the circumstances of the case, must be shown to have knowingly and intentionally waived his rights to citizenship. The petitioner, under all the facts, must have had an opportunity to make an intelligent election between the diametrically opposed courses required as a matter of strict law. *Moser v. United States* 341 U.S. 41. The petitioner urges that his petition for naturalization should be granted because he did not understand that the form which he filled out and mailed to the draft board was an exemption from military service for alienage; nor did he understand at the time he executed such application that relief from military service on account of such exemption would permanently bar him from becoming a citizen of the United States.

The petitioner was lawfully admitted to the United States for permanent residence on August 4, 1953 at which time he was 25 years of age. He registered for selective service at Local Board No. 52 on February 4, 1954, and his questionnaire containing statements of the registrant was received by the Local Board on February 16, 1954. On Februar

171954, the Local Board issued to him an Application by Alien for Exemption from Military Service in the Armed Forces of the United States, and this application was returned to the Board on March 1, 1954. As a consequence of this application the petitioner was classified by the Local Board as a treaty alien exempt from military service on March 3, 1954.

On June 30, 1959, he was called in and gave testimony to a naturalization examiner, stating that he did not remember ever signing the application form for exemption from military service; he testified that he did not read English, nor speak, nor understand it very well at this time; that in the preparation of his selective service questionnaire he was assisted by his brother, Willibald, who wrote all of the answers to the questionnaire, and he identified the handwriting on the questionnaire as that of his brother Willibald. He did state that he signed it, and that he remembered signing this questionnaire. He testified he had no recollection of the application for exemption; he did identify the form, however, as bearing his signature.

Petitioner's wife was called at the same hearing, and stated that she could not understand the English language well at the time of the execution of the form for exemption; that she has no recollection, or remembrance, of reading or seeing anything like the form; that it contained words she did not know the meaning of; and she identified the written portions of the application for exemption form as being in her handwriting.

At the hearing before this court witnesses were called, and testified that they knew petitioner and his wife over the period of time from August, 1953, and subsequently through 1954; that petitioner spoke no English; that it was from one to two years before he understood English; that petitioner's wife did not speak well, but that she knew more and could speak English much better than petitioner; that she did not comprehend the English language fully through the year 1954; that petitioner had to be helped to understand things, and that his wife did not understand too well. This testimony came from neighbors, the landlady, and people associated with the wife of petitioner in her work as a candy dipper.

Petitioner's wife testified at the hearing before the court that when she and her husband were confronted with the application for exemption after he had applied for citizenship and were shown the application by the naturalization examiner they had no recollection of ever having seen or executed such a document previously.

The issue for this court to determine is whether or not petitioner knowingly and intelligently executed the exemption application, and at that time petitioner had an opportunity to freely and intelligently choose between applying for exemption and waiving his right to citizenship or not applying for exemption and remaining eligible for citizenship and military training and service. The evidence submitted by the petitioner does not finally answer thi

question. The petitioner at the time the application for exemption was filled out had been in this country but six months. The testimony of the petitioner, his wife, neighbors, and a landlady show that his ability to speak and understand English was severely limited. It need not, however, be concluded that because the petitioner did not understand English that he necessarily did not understand the exemption application at the time it was filled out even though such form was in English. Direct evidence as to the understanding of the petitioner at the time the exemption application form was completed is slight. Both petitioner and petitioner's wife testified that they did not remember having filled out the form or even having seen it before the hearing upon the petitioner's citizenship application of June 30, 1959, even though the form was admittedly in the handwriting of the petitioner's wife and bore the signature of the petitioner.

The record indicates that the petitioner had the exemption form in his possession between six to nine days before it was returned to the draft board. There is no evidence that the petitioner consulted his brother Willibald, who had two days before prepared and executed the longer, more detailed Selective Service Questionnaire; there is no evidence that the petitioner consulted the aunt who accompanied him to the draft board, or that the petitioner consulted the draft board or the German Consul concerning the form. The failure to consult with anyone other than his wife is of itself inconclusive

on the question of the petitioner's understanding of the exemption application itself. However, the form itself correctly, accurately and completely filled out, constitutes at least some evidence that the person who filled out the form understood the language appearing on its face. Petitioner furnished correctly such information as his local draft board number, alien registration number, nationality, and the country under whose treaty exemption was claimed. This form, signed by him, designated by the Department as C-294, contains upon its face a copy of Section 315 of the Immigration and Nationality Act of 1952, which informed the reader that one applying for exemption on the ground that he is an alien and is relieved from military service on such ground "shall be permanently ineligible to become a citizen of the United States." Upon the evidence presented the court finds that the petitioner did knowingly and intelligently waive his right to citizenship.

Under all these circumstances the findings of fact and conclusions of law of the naturalization examiner are proper and correct, and adopted by this court.

Petition Denied.

Dated: March 30, 1960.

/s/ ALBERT C. WOLLENBERG,
United States District Judge.

[Endorsed]: Filed March 30, 1960.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given this 16th day of May, 1960, that Alfons Simon Keil hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of this Court which was filed and entered on the 30th day of March, 1960, in favor of the defendant and against the said Alfons Simon Keil, petitioner.

JACKSON & HERTOGS,
Attorneys for Petitioner.

By /s/ JOSEPH S. HERTOGS.

[Endorsed]: Filed May 23, 1960.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Whereas, the Petitioner has appealed to the United States Court of Appeals, for the Ninth Circuit from the judgment of this court entered March 3, 1960.

Now Therefore, in consideration of the premises and of such appeal, the undersigned, United Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of Washington, and duly authorized to transact a general surety business in the State of California, does undertake and promises on the part of the Peti-

tioner to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred and Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above-entitled Court, may proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of Section 73C of the Federal Rules of Civil Procedure.

In Witness Whereof, the corporate seal and name of the said Surety Company, is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 2nd day of June, 1960

[Seal]

UNITED PACIFIC
INSURANCE COMPANY,

By /s/ THOMAS B. FINNERAN,
Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On June 2, 1960, before me, Mary Black, a Notary Public in and for said City, County, and State, personally appeared Thomas B. Finneran, known to

to be the person who executed the within instrument as Attorney-in-Fact on behalf of the United Pacific Insurance Company, and acknowledged to that said corporation executed the same.

[Seal] /s/ MARY BLACK,

Notary Public in and for Said
City, County, and State.

My Commission Expires November 12, 1960.

[Endorsed]: Filed June 6, 1960.

In the United States District Court, Northern
District of California, Southern Division

Petition No. 137140

Petition for Naturalization of:

ALFONS SIMON KEIL.

Before: Hon. Albert C. Wollenberg, Judge.

Appearances:

For the Petitioner: Joseph S. Hertogs, Esq.

For the Respondent: Daniel H. Lyons, Esq.

PROCEEDINGS OF TRIAL

February 24, 1960

Mr. Lyons: If your Honor please, this is on page 30. I must appologize for the briefs; they are a little long winded, but we thought the Court would appreciate some backgroun on the case. I

have nothing to add to the brief. I understand your Honor has read it.

The Court: I have read it.

Mr. Lyons: I would like to complete my case by introducing these exhibits, if I may.

Exhibit No. 1 is the application to file a petition for naturalization.

The Clerk: State your appearances for the record, please.

Mr. Hertogs: Joseph S. Hertogs for the Petitioner Keil.

The Court: All right. You're familiar with these?

Mr. Hertogs: Yes, your Honor.

Mr. Lyons: And Exhibit No. 2 will be the photostatic copy of the Selective Service file.

Mr. Hertogs: No objection, your Honor.

The Court: All right.

Mr. Lyons: Exhibit No. 3 is a statement taken from the petitioner by naturalization examiner Francis P. Bolan on February 13; I can't read my date . . . 1959.

Mr. Hertogs: No objection.

The Clerk: These are Moser's exhibits?

Mr. Lyons: No, Government's exhibits. [2*]

The Court: You got the wrong file.

Mr. Lyons: Still got Moser on my mind. They are the same thing.

The Court: Let them be marked 1, 2 and 3, as previously shown by the record.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Lyons: This is the statement of the petitioner on June 30, 1959, not the other date.

The Court: Exhibits 1, 2 and 3 admitted and filed in evidence.

(Application to file a petition for naturalization received in evidence as Respondent's Exhibit 1; Photostatic copy of Selective Service file received in evidence as Respondent's Exhibit 2; and Statement from petitioner dated June 30, 1959, received in evidence as Respondent's Exhibit 3.)

Mr. Hertogs: If the Court pleases, I think this case resolves on one question only, and that is whether or not the facts in this case fall within the decision of the Supreme Court of the United States in Moser, which has been cited by counsel for the Government.

In the Moser case, the Supreme Court of the United States said that there must have been a knowingly and intelligent choice made in order to waive the rights of citizenship. I think that is the whole problem in this particular case. [3]

The facts in this case will show from the record itself that we have here a petitioner who is a native and citizen of Germany, and he is here today and willing to testify on the stand. We also have a number of other witnesses available who can testify.

At the time that he left Germany, he did not know a single word of English. He arrived in the United States in August of 1953. Somewhere along the line, he was told he had to file for Selective

Service, and he did go and ask for an application in about January of 1954, which was within the normal period, within six months prescribed by the regulations.

During the time between his arrival and late August, 1953, the time of the first appearance at Selective Service Board, the only work that he was able to obtain, even though he is a skilled craftsman, was as a common laborer moving trash and other junk out around the construction project at Mills College.

He did not learn a single word of English, and he started to go to school in the latter part of January, 1954. We have witnesses here who knew him New Year's Day, 1954, which is the nearest that I can find at the time of filing the petition, who will testify he did not know a single word of English at that time. His wife was doing a little better; she knew a few words.

Then he says—there is the difference, and I think we [4] will have to go by the official record—he felt that the questionnaire and the form 301 were sent to him at the same time by the Selective Service Board.

He did not appear at the Selective Service Board. This is different from the typical case. In this case they were mailed to him, and he thought the two forms came together, but the record shows that one form was mailed to him the early part of February and returned on or about February 16, 1954, and the following day the Selective Service Board, without any notation or request on his part forwarded to

In the Selective Service Form 301, which he signed and we admit he returned, and it's dated February 3, 1954.

Now, the question is, was there a knowing and intelligent choice on his part to secure an exemption from military service at that particular time. If the answer is in the negative, I think he is entitled to admission to citizenship. If the answer is an affirmative, I see no alternative but the petition must be denied. I think it is solely on that one particular question; and this case can be differentiated from the number of cases cited by counsel in his brief. There are some of those cases which sustain our position as indicated there, but most of the other cases are absolutely different from the facts in this particular case.

Like in the Coronado case, that man had 18 years' residence in the United States. The Machado case is in our [5] favor on the point. They said here, he did not have an opportunity to make an intelligent choice.

In the Memishoglu case, which is another circuit case, he had come here for the purpose of studying. He had been five years in college; he only had one more semester to graduate. He worked three years in the meantime in industry. I don't think those facts are comparable.

The petitioner Husney, he had entered the United States in 1927, completed his schooling in the United States; he filed a Form 43 after 16 years of education in this country.

All the cases, except those, I would say there was

only one case which even comes close to the particular facts in this case, but there are two very recent cases which are not cited by counsel: one is 177 Fed. Sup. 887, where the man was admitted, and is something similar to this case; and there is another new one, 171 Fed. Sup. 898, in which the man was admitted. In that case, it was a language-barrier case.

I think in this particular case, if it can be clearly established, I think by the testimony, that this man had no knowledge, absolutely none whatsoever and no advice as to how to proceed or what to do at that particular time, he had no intent on his part to secure any waiver from the military service. As a matter of fact, I am told, and it appears from the record, that until the time he appeared in immigration in connection with the filing of the petition, he and his wife [6] filed simultaneously, she was admitted to citizenship, up to that particular point he did not know that he had ever filed such a document.

If the Court desires, I have witnesses that I would like to have testify. I don't know the Court's attitude.

The Court: I think you're certainly privileged to put on your witnesses, if you desire. It won't take too long?

Mr. Hertogs: No, I will not, your Honor.

Mrs. Weise.

MELANIE WEISE

called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

The Clerk: State your full name and your address to the Court.

The Witness: Melanie Weise, 404 Bradrick Drive, San Leandro.

The Clerk: Will you spell your name, please.

The Witness: M-e-l-a-n-i-e, last name, W-e-i-s-e.

Direct Examination

by Mr. Hertogs:

Q. Mrs. Weise, do you know the petitioner Alfons Keil? A. Yes, I do.

Q. You know his wife? A. Yes.

Q. Can you tell the Court approximately when you first met [7] the petitioner?

A. First time I met them, August, 1953, when they look for an apartment. And then I didn't see them for all the months until January—I mean New Year's Eve. We brought them over that time and since then, we met all the time.

Q. Now, at the time you first met the petitioner, could he speak or understand a single word of English? A. No, nothing.

Q. When do you feel that he first learned any English whatsoever?

A. Well, it took him a long time, at least one and a half, almost two years until he could get round a little bit.

Q. Now, at the time you met him on the second

(Testimony of Melanie Weise.)

occasion, New Year's Eve—I presume December 31, 1953? A. Yes.

Q. What was that occasion?

A. New Year's Eve dance.

Q. Where did you see him?

A. San Leandro.

Q. How do you recall that occasion?

A. Well, it was the second time we saw each other, so we together—they didn't have any friends, and they didn't know anybody, so we were sitting together and they didn't have anybody to drive them home, so we drove them home; and since then, we were friends. [8]

Q. You understood the German language at that time?

A. Yes. I couldn't speak English very well either that time, so——

Q. All the conversation you had with them was in the German language? A. Yes, yes.

Q. On that occasion, did he speak or understand any English; that is, December 31, 1953?

A. He could speak no English at all.

Q. Did you ever hear him at any time state that he was applying for exemption from military service? A. No, never.

Q. Do you know if he had any objection, or did you ever hear him make any comment he had objection to military service?

A. He said he might have to go to the service.

Q. He might have to go?

(testimony of Melanie Weise.)

A. Yes; because he reported to the draft board like everyone else do.

Q. Did he ever state that he had filed a form to get out of military service?

A. To get out? No.

Mr. Hertogs: I have no further questions of the witness, Mr. Lyons. [9]

Cross-Examination

by Mr. Lyons:

Q. How was your English yourself at that time you met him, could you speak English when you met them? A. No, not much.

Q. Oh, you couldn't speak English to them, if you wanted to, could you? A. No.

Q. Okay.

A. Because I was here only a year, a little over a year.

Redirect Examination

by Mr. Hertogs:

Q. How much English did you know then?

A. Not much.

Q. A little bit?

A. A little bit, but not much.

Mr. Hertogs: I have no further questions, your Honor.

The Court: All right; I haven't any. You may step down.

(Witness excused.)

Mr. Hertogs: Mrs. Croft.

EILEEN CROFT

called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

The Clerk: Please state your name and address to the Court. [10]

The Witness: Eileen Croft, 2541 Ninth Avenue.

Direct Examination

By Mr. Hertogs:

Q. What city is that? A. Oakland.

Q. Miss Croft, do you know the petitioner, Alfons Keil? A. Yes, sir, I do.

Q. When did you first meet him?

A. About March, 1954.

Q. Where did you meet him at that time?

A. They rented an apartment from us.

Q. Do you remember the occasion?

A. Yes, sir; I do.

Q. At that time, could the petitioner speak or understand any English?

A. No, sir; he could not.

Q. How long did he live in that apartment that they rented from you?

A. Oh, I'd say about three or four years.

Q. Can you recall approximately during that period when you would say that the petitioner was able to understand, oh, at least some of the usual phrases in the English language?

A. I can't say exactly. I would judge about a year, a year and a half, something like that. It was a long time, I know. [11]

(Testimony of Mrs. Eileen Croft.)

Q. Now, of your own knowledge, he could not understand or speak any English at the time he rented your apartment in about March, 1954?

A. That's right.

Q. Have you ever heard the petitioner comment about military service? A. No, sir; I haven't.

Q. Did he ever state that he was seeking exemption or that he did not desire to serve in the armed forces? A. No.

Mr. Hertogs: I have no further questions, your honor.

Cross-Examination

by Mr. Lyons:

Q. Mrs. Croft, how did he rent your apartment? Do you speak German? A. No, sir; I don't.

Q. And he doesn't speak any English—at that time? A. No, he didn't.

Q. How could he rent the apartment, then?

A. Through his wife.

Q. She understood English?

A. No, not completely.

Q. I am not saying completely, but she spoke English enough to rent the apartment?

A. She knew enough to say that they saw the sign, they [12] wanted to see the apartment. I mean—I can't exactly remember her words, but I mean that they were foreigners and we had an apartment to rent and we knew they wanted to see it, but they couldn't speak English.

Q. They understood—what was it, rented on a monthly basis? A. Yes, sir.

(Testimony of Mrs. Eileen Croft.)

Q. On a lease or——

A. On a monthly basis.

Q. They understood enough, or at least the wife understood what the monthly rent was?

A. Yes.

Q. And that sort of thing?

A. That's right.

Q. Now, you say he didn't say anything about applying for exemption from military service. Did you ever ask him about that at all?

A. No, I didn't.

Q. There wasn't any occasion for you——

A. No.

Mr. Lyons: That is all.

Redirect Examination

By Mr. Hertogs:

Q. Can you explain a little more clearly the amount of English that the wife knew in March of 1954? [13]

A. Well, living across the street from us, Katie would come over to the house and visit with me. They didn't know anybody. I have five children and there was always a lot going on at my home, and being that they rented the apartment from us, I was the only person there that she knew; and she would come over to the house and sit and listen; and like, if I was doing something that she didn't understand, well, like see, pouring a glass of milk, she wanted to know how to say "milk," and she

(Testimony of Mrs. Eileen Croft.)

would make sounds like "moo" or a cow, or things like that, and then I would say milk. I would explain to her gradually; then she would grasp.

Mr. Hertogs: I have no further questions, your honor.

The Court: Thank you, Mrs. Croft.

(Witness excused.)

MAX DROLLET

Called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

The Clerk: Please state your full name, your address and your occupation to the Court.

The Witness: My name is Max Drollet. It is spelled D-r-o-l-l-e-t, and I reside at 5536 Holway Street, in Oakland.

Direct Examination

by Mr. Hertogs:

Q. Mr. Drollet, do you know the petitioner, Alfons Keil? [14] A. I do.

Q. Will you explain to the Court when you first met him?

A. I met the couple through my wife. My wife at the time, still is, my wife is employed by the Edy's Candy Company at Berkeley, and she came home one evening and told me that this young German girl was working there in the Oakland factory and was curious to know all about it; and, of course,

(Testimony of Max Drollet.)

she told me that the girl was doing certain types of specialty work like on the particular dipping machines, chocolate dipping machine. Later on, she would have something better, something lighter than handling these heavy——

Mr. Lyons: May it please the Court, he is testifying as to what his wife told him. If the wife is present, that would be a much better way.

The Witness: Well, anyway, then——

Mr. Lyons: I object to this whole thing, your Honor.

The Court: Yes; just tell us what happened.

The Witness: Well, then——

The Court: Let counsel ask you——

The Witness: They came home——

The Court: You met them in your home?

The Witness: In my home.

The Court: Remember about when that was?

The Witness: Oh, it was, I imagine, five and a half years ago. [15]

Q. (By Mr. Hertogs): That would make it late in 1954?

A. '54, that's right, yes. '54—I will say after the half year of '54, close to Christmas of '54, oh, I guess in that fall.

Q. You met them in your home at that time?

A. That's right; the first time.

Q. Did the petitioner at that time speak or understand any English?

A. Not very well, no; not too, too well.

(Testimony of Max Drollet.)

Q. Did he understand enough English to carry on a conversation?

A. Very hardly, I'll say. I would ask the questions, and he would answer them and, of course, his wife would come to the rescue and describe the question, and, of course, the answer also. She was a little more, I imagine, advanced than he was as far as the language barrier. They both spoke with quite a distinct accent, and he did much more so. He would ask a lot of questions by describing certain things, certain material things, as we discussed it or talked about it, we visited.

Q. At that time, when you first met him, was it your impression that he did not fully comprehend the English language?

A. That's right; he did not.

Mr. Hertogs: I have no further questions. [16]

Cross-Examination

by Mr. Lyons:

Q. Mr. Drollet, do you fully comprehend the English language? A. I believe so.

Q. I don't. You say that he asked, the petitioner asked a lot of questions in the course of his conversation? A. That's right.

Q. About various things. Were they asked in English?

A. He would try to describe it in a way, material things, like in the home.

Q. Yes.

A. For instance, mechanical things.

(Testimony of Max Drollet.)

Q. You understood what he was talking about?

A. No, not at first. I would try to decipher it. I have no knowledge of the German language whatsoever.

Q. But you understood enough to carry on a conversation later on?

A. No, his wife would come to the rescue most of the time and she would explain, try to tell me what Alfons would mean.

Q. She was more advanced than he was?

A. In a way, she was, yes.

Q. He was never able to carry on the conversation?

A. Not fluent enough—I wouldn't say a fluent conversation, no. [17]

Q. It must have been very frustrating, then?

A. Well, it was; very. One thing that amazed me was the fact that they did not read a newspaper which I put in front of him at one time, and I urged them to subscribe to the local paper where they lived.

Q. Did you have any discussion with the couple about the draft?

A. No; outside of one occasion, I don't remember exactly when. He told me that he was expecting to get something from the draft at any time, it was pending. That was the only thing that was ever brought up to me.

Q. What was the occasion for bringing that up?

A. We were talking about branches of the service, I believe, my nephew having been in the Coast

(Testimony of Max Drollet.)

Guard; and I asked him what desire he would have to be in the armed forces, the Air Force, the Navy, or in the Coast Guard, or the Army; and I was trying to cite the various branches of the service, and that was it. That is all I knew about it.

Mr. Lyons: Thank you.

Mr. Hertogs: No further questions, your Honor.

(Witness excused.)

Mr. Hertogs: Mrs. Drollett.

ALBERTA JANE DROLLET

Called as a witness on behalf of the petitioner, being first duly sworn, testified as follows: [18]

The Clerk: Please state your full name and address to the Court.

The Witness: Alberta Jane Drollet, 5536 Holiday Street, Oakland.

Direct Examination

By Mr. Hertogs:

Q. Mrs. Drollet, are you acquainted with the petitioner, Alfons Keil? A. Yes.

Q. Would you explain briefly when you first met him?

A. I met him in August, middle part of August, 1954, through his wife, which was employed with me.

Q. At that time, to the best of your recollection, did he speak or understand any English?

(Testimony of Mrs. Alberta Jane Drollet.)

A. No. He was afraid to talk. His wife would try to speak for him, or try to help out.

Q. There has been discussion, prior testimony concerning the wife. How good was her English in August, 1954?

A. Well, not too good. We tried to help her at work, which I think has helped her quite a bit.

Q. Could she carry on a conversation in English?

A. No, we would kind of patch it up all together to try to get her conversation. No, not too well.

Q. When do you feel that the petitioner first learned sufficient English to carry on a conversation? [19]

A. I would say about a year and a half to two years with us; we would all help her at work and correct her and she finally caught on.

Q. How about Mr. Keil?

A. Well, Mr. Keil is a little bit slower, I think, in his English grammar.

Mr. Hertogs: I have no further questions, your Honor.

Cross-Examination

By Mr. Lyons:

Q. You just knew the petitioner's wife?

A. Wife and husband; I met him.

Q. Did he bring any of his relatives, like his brother Willopaul?

A. No; he had a brother, he told me he had a brother in Los Angeles.

(Testimony of Mrs. Alberta Jane Drollet.)

Q. You never met him?

A. I met him once, but very brief.

Q. How was his English?

A. To tell you the truth, I don't know. There was a death in the family; he dropped in. We didn't speak very long, quite late in the evening.

Q. You did speak; you didn't have any difficulty with him, as you recall?

A. I would say—I think he might have spoken a little bit better than Mr. Keil, but not too well. [20]

Q. Better than the wife?

A. No, I wouldn't say that. It was about two years ago.

Q. I see.

Mr. Hertogs: That is all.

(Witness excused.)

Mr. Hertogs: Mrs. Keil, will you step forward?

KATHARINA KEIL

Called as witness on behalf of the petitioner, being first duly sworn, testified as follows:

The Clerk: Please state your full name and your address to the Court.

The Witness: Katharina Keil, 6535 Knott Boulevard, El Cerrito.

Direct Examination

By Mr. Hertogs:

Q. You are the wife of the petitioner?

A. Yes, I am.

(Testimony of Mrs. Katharina Keil.)

Q. You and your husband came to the United States in August, 1953, is that correct?

A. Yes.

Q. Before you came to the United States, had you ever studied English at all?

A. No, I didn't have a chance, because—no chance in our little town where you can take up English. You have to go to college to do that. [21]

Q. Tell the Court what you did following your arrival in the United States in August, 1953.

A. I first came on the train, didn't have anything to eat for three days, because we couldn't order anything, just bought peanuts when we stopped over, and things like that.

Then we went to the aunt's for five or six weeks, about 76 years old, something like that, and then we looked for an apartment. That is where we met Mrs. Weise, and we had been married for six months, and no way of getting out, and so then we moved to Mrs. Croft, where there was a cheaper apartment and was around March; then in August, I started working at Edy's.

Mr. Lyons: May it please the Court, I don't see the relevancy of this particular testimony.

Mr. Hertogs: The question is coming.

Q. At the time that you moved—when did you move from the first apartment to the second apartment?

A. Well, it was the 19th of March we moved into that cheaper place.

Q. Now, when you were living in the first apart-

(testimony of Mrs. Katharina Keil.)

ment, before moving to the second apartment, had you or your husband learned any English?

A. Very little. His brother was living with us, and we trusted him; but he didn't know more than we did.

Q. You were trying to learn English prior to that period, is that correct? [22] A. Yes.

Q. Now, do you recall the occasion your husband received in the mail a questionnaire from the Selective Service Board?

A. Yes, we went down with the aunt to report, because he was laid off at that time, and so they said they just would mail the papers to him; and after a while when the mail come and we thought they all come together, but we wanted to do it right and filled out everything and signed everything and mailed them back.

Q. You mean altogether you think the questionnaire and the Form 301, which the Service has shown, came together in the same mail?

A. That's what I thought, but they stated differently six years ago. I don't know when the mail come.

Q. Did you help your husband fill in either of those forms?

A. Yes, I did. I mean, we could read the name and country and signature; we knew that, but we couldn't read the rest of it.

Q. At the time you filled in that second form, which is a short form which the Government has shown you—— A. Yes.

(Testimony of Mrs. Katharina Keil.)

Q. Did you know that you were filling in a form asking for an exemption on behalf of your husband?

A. No, we didn't; we didn't know the form existed until last July at the hearing on [23] Sansome.

Q. Is that the first time that you knew that that form existed? A. Yes, sir; that is.

Q. That's July, 1959?

A. It was June 30 when we had that appointment for the hearing, because when we were up for the test, the examiner said "You refused to go the Army," and we were sure there was a mistake, just a matter of checking up, because we didn't do so. Then last July we had a hearing and they showed us the paper there. We never have seen that paper before, at least didn't remember it existed.

Q. You do recognize the handwriting of you and your husband? A. That was my handwriting.

Q. Your handwriting and that of your husband?

A. Yes, it was.

Q. But at the time you did not know that that form was asking for an exemption from military service? A. No, we did not know that.

Mr. Hertogs: I have no further questions, your Honor.

Mr. Lyons: May I have Exhibit No. 2, please?

(Testimony of Mrs. Katharina Keil.)

Cross-Examination

By Mr. Lyons:

Q. Mrs. Keil, there were two questionnaires filled out, weren't there? A. Yes. [24]

Q. I mean two papers.

A. I don't know how many there were; I thought there was a whole bunch of them.

Mr. Lyons: May I approach the witness?

Q. Is this the questionnaire you filled out for him? Is this your writing here?

A. No. This, I think—that could be my printing, my brother-in-law prints, too. No, that isn't mine.

Q. This is his brother's? A. Yes.

Q. Now, how about this one here?

A. This is my writing and my husband's signature, but all we write there was the name and the number. I remember the number, but we couldn't read the rest of it.

Q. It says, "I Alfons Keil——"

A. I knew there has to be a name there.

Q. "——a national of ——"

A. Germany; we knew that.

Q. You knew that? A. Yes.

Q. "I am a registrant of Local Board No.——"

You knew that?

A. We had the little card where it said——

Q. You could read that there, put 51 in?

A. You just can read things by looking at it,

no. [25]

Q. It says "City"? A. Yes.

(Testimony of Mrs. Katharina Keil.)

Q. Alameda? A. Yes.

Q. County? A. That's right.

Q. State? A. Yes.

Q. "My selective service number is" so and so, you put that in?

A. Yes, but don't you think that is much easier than reading that, now?

Q. "My alien registration number is" so and so; you put that in?

A. We knew about that. I learned the alien number.

Q. Alien registration number; that's pretty difficult, isn't it; registration number?

A. Yes, but we knew what it was because we always filed those cards in January.

Q. "I hereby apply for exemption from military service." You didn't understand that?

A. No.

Q. But you understood "My alien registration number is——"

A. We always filed those cards.

Q. What is so difficult about "I"? [26]

The Court: Don't argue.

Mr. Lyons: I am sorry.

Q. "In the armed forces of the United States"?

A. No, we didn't read that.

Q. "On the grounds that I am an alien." Do you recognize "alien"? A. No.

Q. You didn't recognize anything; "and am entitled to such exemption under the terms of a treaty between Germany——" you put in Germany?

(Testimony of Mrs. Katharina Keil.)

A. Well, aren't those forms below say country below there?

Q. No, there's nothing there, all it was is a blank.

A. I don't know; but I am sure——

Q. "Between the United States," why did you put Germany in there? A. I don't know.

Q. "I have read the——" here it goes——"I have read the provisions of Section 315." You didn't understand any of that? A. No, I didn't.

Q. Dated at Oakland—you put in Oakland?

A. Well, we could write the date and all that, yes; signature, we could read that.

Q. How about down here, Section 315?

A. I have no idea what that said.

Q. (Reading): "Notwithstanding the provisions of Section 405, any alien who applies or who has applied for exemption or [27] discharge from training or service in the armed forces or in the national security corps of the United States on the ground that he is an alien and is or was relieved or discharged from such training or service on such grounds shall be permanently ineligible to become a citizen."

You didn't read that?

A. No, sir. Do you think we would have gone to school for six months and filed an application and done everything if we had known that?

Q. Have you signed any other papers without reading them?

A. No, I don't any more. I learned my lesson.

(Testimony of Mrs. Katharina Keil.)

Q. Now, this is his brother's, the questionnaire?

A. Well, he prints small, just the same as I do. I think some of it, like this, I recognize isn't mine.

Q. Here it says his brother helped him make it out.

A. Yes, we did; and we trusted him.

Mr. Lyons: I haven't anything more.

The Court: Let me ask you this: You say you didn't even remember that document?

The Witness: No, because there was several and we just——

The Court: So now when you answer Mr. Lyons and saying you could read some and couldn't read other portions, you are just assuming that's right, isn't that it? You have no recollection of what happened?

The Witness: No, we didn't know we filed anything like [28] that up until last July. We were shocked to see such a paper existing.

Redirect Examination

By Mr. Hertogs:

Q. Were both of those forms mailed to you at your residence?

A. Yes. There was more than two, I think; a whole bunch of papers.

Q. More than one page? A. Yes.

Q. Is that it? Did you mail them back?

A. Yes, we filled them out and thought we did the right thing and mailed them back.

(testimony of Mrs. Katharina Keil.)

Q. You didn't take them back to the draft board?

A. They were supposed to be mailed in in so many days.

Q. Neither you nor your husband went back to the draft board? A. No.

Q. That one occasion only?

A. Only when he reported for it, yes.

Q. That is the first time? A. Yes.

Q. Was that about January, 1954?

A. Yes. He was just out of work. That is right.

Mr. Hertogs: I have no further questions, your Honor.

Mr. Lyons: Nothing further, your Honor. [29]

(Witness excused.)

Mr. Hertogs: I didn't call the petitioner, your Honor. Exhibit 3, a statement in the file taken from the petitioner in which they asked some questions and he couldn't even answer them.

Mr. Lyons: Or he didn't want to answer them. He did answer three-quarters of them.

The Court: Well, you want to——

Mr. Hertogs: There's no further evidence to present, your Honor. I think it is solely a question of whether the Court feels that this man had a free, voluntary and intelligent choice at that time.

Mr. Lyons: Are you through?

Mr. Hertogs: Yes.

Mr. Lyons: Thank you.

May I call the Court's attention to Section 315, 315(b):

"The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training * * *"

None of the cases ever come out on that. I think that is a provision that has been entirely overlooked.

Also, the Court might be interested in knowing that the treaty with Germany was abrogated on June 2, 1954, and the German aliens were no longer eligible to file for claim of [30] exemption.

The Court: Yes. But this is based entirely on the filing of the claim.

Mr. Lyons: That's right. He was within the provisions.

The Court: He was within the provisions, so we are not concerned with that now.

Mr. Lyons: That might explain the——

The Court: In regard to the other point, as to the conclusive presumption on the basis that he has avoided his military—I mean, at least military training period is now over?

Mr. Lyons: He will never be drafted.

The Court: Well, I have a feeling I would like to go over these full statements, and so forth. Did you want to cite something?

Mr. Hertogs: No, just going to tell you there is a very fine annotation in the lawyer's edition, available to the Court, one lawyer's edition, starting at Page 1929. It relates to this whole problem. On Page 1932, Paragraph 5, voluntariness, application

an exemption, knowledge of its effect, mistake,
covered very thoroughly.

The Court: Fine.

Mr. Hertogs: A very recent annotation.

The Court: That's available in the library.

All right, let this matter stand submitted.

Mr. Hertogs: Thank you, your Honor.

Endorsed]: Filed June 28, 1960. [31]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath Clerk of the United States
District Court for the Northern District of Cali-
fornia, hereby certify the foregoing and accompany-
ing documents and exhibits, listed below, are the
true and complete originals and photostats of origi-
nals filed in this Court in the above-entitled case and
constitute the record on appeal herein as designated
by the attorneys for the appellant:

Petition.

Findings of Fact, Conclusions of Law and Rec-
ommendation of the Designated Naturalization
Examiner.

Order—Submit for Decision.

Order Confirming Findings of Fact, Conclusions
of Law and Recommendation of Designated Natu-
ralization Examiner.

Notice of Appeal.

In the United States Court of Appeals
for the Ninth Circuit

No. 17004

ALFONS SIMON KEIL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION

It is hereby stipulated, by and between counsel for appellee and counsel for appellant, that all exhibits introduced at the time of trial of the above-titled matter may be considered in their original form without printing.

Dated: July 11, 1960.

/s/ JOSEPH S. HERTOGS,
Attorney for Appellant.

/s/ LAURENCE E. DAYTON,
United States Attorney;

/s/ CHARLES ELMER COLLETT,
Asst. United States Attorney,
Attorneys for Appellee.

[Endorsed]: Filed July 15, 1960.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY IN THE APPEAL OF THE ABOVE-ENTITLED MATTER

Comes now Alfons Simon Keil, by and through his attorneys, Jackson & Hertogs, and files herein the Statement of Points on which appellant intends to rely in the appeal of the above-entitled matter:

I.

The District Court erred in finding that appellant was an alien permanently ineligible to become a citizen of the United States.

II.

The District Court erred in denying appellant's petition for naturalization as a citizen of the United States.

Dated: July 20, 1960.

/s/ JOSEPH S. HERTOGS,
Attorney for Appellant.

[Endorsed]: Filed July 23, 1960.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE INCORPORATED IN TRANSCRIPT ON APPEAL

Appellant, Alfons Simon Keil, by and through his attorneys, Jackson & Hertogs, hereby designates the entire record in the above-entitled matter, except exhibits, to be included in the transcript on appeal.

Dated: July 20, 1960.

/s/ JOSEPH S. HERTOGS,
Attorney for Appellant.

[Endorsed]: Filed July 23, 1960.

